



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 152-00

24 April 2000

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 19 April 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you reenlisted in the Navy for three years on 22 February 1989 as a DC1 (E-6). At the time of your reenlistment, you had completed 10 years of prior active service.

The record reflects that you received a marginal enlisted performance evaluation on 30 November 1989, and the command withdrew its recommendation for advancement to chief petty officer. On 12 June 1990, you were formally counseled for failure to meet physical readiness standards due to obesity. You were warned that failure to take corrective action could result in administrative separation. On 28 November 1990 you received nonjudicial punishment (NJP) for dereliction of duty. Punishment imposed was 30 days of extra duty and reduction in rate to DC2 (E-5). On the same date, you also received an adverse enlisted performance evaluation which assigned marks of 2.8 in most rating categories. As a result of this evaluation, the Chief of Naval

Personnel (CNP) subsequently issued you a letter of substandard service which precluded any further reenlistment or extension without prior approval from CNP.

On 22 May 1991, you were convicted by civil authorities of felony child abuse for breaking two ribs of your 13 year-old son. You were sentenced to three years of probation, 120 days in the county jail (stayed pending a review hearing), a \$300 fine, and you were ordered to pay restitution to the victim/restitution fund.

On 11 June 1991 you received a second NJP for a four day period of unauthorized absence. Punishment imposed was 30 days of extra duty and a suspended reduction in rate to DC3 (E-4).

On the same date, you were notified that you were being considered for discharge under other than honorable conditions by reason of misconduct due to civil conviction and commission of a serious offense. You were advised of your procedural rights and elected to present your case to an administrative discharge board (ADB). You appeared before an ADB with counsel on 5 September 1991. The ADB unanimously found you had committed misconduct due to civil conviction and commission of a serious offense, and recommended discharge under other than honorable conditions.

On 23 September 1991 the commanding officer (CO) concurred with the ADB proceedings and recommended that you be discharged under other than honorable conditions. In his recommendation, the CO noted that you had been substandard in military performance and addressed deficiencies in the ADB cited by your defense counsel. He also noted that evidence offered at the board by your defense counsel showed there were prior incidents of spousal and child abuse that had been reported to child protective services during the past six years. Further, you admitted on cross-examination that you had abused your family in the past.

On 8 October 1991, CNP directed discharge under other than honorable conditions by reason of misconduct due to civil conviction. You were so discharged on 18 October 1991.

In its review of your application, the Board conducted a careful search of your service record for any mitigating factors which might warrant recharacterization of your discharge, reinstatement to DC1, and/or a change in your reenlistment code to allow reenlistment. However, other than your prior honorable service, no justification for such a changes could be found. The Board noted your contentions to the effect that your felony conviction was subsequently changed to a misdemeanor and then removed from the civil record as if nothing ever happened; that you have divorced your former wife and at your son's request have had

little or no contact with him; and that you have remarried and are an active church member. The Board concluded that your contentions were insufficient to warrant recharacterization of your discharge given your record of marginal to substandard performance, two NJPs, and the serious nature of your civil conviction. The fact that civil authorities subsequently changed the charge from felony child abuse to a misdemeanor, and then dropped it from your civil record does not change the basis for your discharge. These subsequent actions by the civil authorities do not void your discharge or compel this Board to do so. You were convicted of an offense for which a punitive discharge was authorized had such charges been referred to a court-martial. Prior to your civil conviction, you were identified to CNP as a substandard performer and were restricted from reenlistment without prior approval. The Board found no demonstrable reason why you should be reinstated to your former pay grade. Regulations require the assignment of an RE-4 reenlistment code to those individuals discharged by reason of misconduct or after receiving a letter of substandard service. The Board thus concluded that the discharge and reenlistment code were proper and no changes are warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director